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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,065	08/17/2001	Kazuhiko Nobe	Q65710	2593

7590 09/24/2003
SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC
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Washington, DC 20037-3213

EXAMINER

WHITE, CARMEN D

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 09/24/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/931,065

Applicant(s)

NOBE ET AL.

Examiner

Carmen D. White

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3 and 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3 and 4 recite the limitations "the timing acquisition means" and "the timing guidance means" in lines 11-12 and 12-13, respectively. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 3-4 are rejected under 35 U.S.C. 102(e) as being anticipated by **Suzuki** et al (6,227,968) or **Sagawa** et al (6,379,244).

Regarding claims 1 and 3-4, Suzuki or Sagawa teaches a game machine/game process method/information storage medium storing a program for providing each of a first player and a second player with a game allowing a player to enjoy operation of the game using a controller according to game music that comprises a timing acquisition

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means/step for acquiring game operation timing at which each of the first player and the second player operates the game; timing guidance means/step for presenting game operation timing at a predetermined guidance level to each of the first player and the second player; game operation evaluation means/step for verifying the game operation timing acquired by the timing acquisition means/step with the game operation timing presented by the timing guidance means to evaluate game operation by each of the first player and the second player; and guidance level changing means for changing the predetermined guidance level with respect to at least one of the first player and the second player, based on a result of evaluation made by the game operation evaluation means (**Suzuki** -lines 9-15 of abstract; col. 1, lines 55-67; col. 3, lines 16-20; col. 4, lines 17-18; col. 7, lines 51-65; col. 8, lines 40-67; col. 9, lines 6-25; col. 11, lines 6-67 and col. 12, lines 34-39; Fig. 9; **Sagawa** -abstract; col. 1, lines 60-64; col. 2, lines 1-5 and lines 59-64; col. 3, lines 3-6, lines 25-30, lines 40-44 and lines 49-57; col. 6, lines 17-40 and lines 65-67; col. 7, lines 28-50; Fig. 9; Fig. 10; Fig. 18; col. 9, lines 14-26; col. 12, lines 23-33; col. 13, lines 49-67).

Claims 5-7 are rejected under 35 U.S.C. 102(e) as being anticipated by **Higurashi** et al (6,582,309).

Regarding claims 5-7, Higurashi teaches a gaming machine/game process method/information storage medium storing a program **for providing** a player with a game allowing the player to enjoy operation of the game using a controller according to game music that has a time guidance means/step for displaying a first operation timing instruction image and a plurality of second operation timing instruction images gradually

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approaching the first operation timing instruction image displayed on a display screen, to thereby display a state in which game operation timing is arriving, and guidance level changing means for changing a speed at which the plurality of operation timing instruction images approach the first operation timing instruction image to thereby change a predetermined guidance level of the timing guidance means (lines 4-8 of abstract; Fig. 25; col. 2, lines 50-65; col. 3, lines 52-63; col. 6, lines 31-32).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Suzuki et al or ***Sagawa*** et al in view of ***Higurashi*** et al.

Regarding claims 2 and 5-7, Suzuki or Sagawa teach all the limitations of the claims as discussed above. While the references teach the feature of changing the difficulty level according to an evaluation determination of a player's performance, Suzuki or Sagawa lacks the explicit disclosure of changing the speed at which the plurality of operation timing instruction images approach the first operation timing instruction image to thereby change the predetermined guidance level. In an analogous controller-operated, music gaming system, Higurashi teaches this feature (lines 4-8 of abstract; Fig. 25; col. 2, lines 50-65; col. 3, lines 52-63; col. 6, lines 31-32). It would have been obvious to a person of ordinary skill in the art at the time of the invention to

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include this feature, as taught by Higurashi, in Suzuki or Sagawa to make the game more fun and to introduce an unexpected element into the game.

Pertinent Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ishikawa et al, Devecka, Beyoung-Wook, Oishi et al, Shimomura et al, and Sigalov (GB 2183889 A) teach music gaming devices.

Examiner's Response to Applicant's Remarks

Applicant's arguments, see paper #6, filed July 7, 2003, with respect to the rejection(s) of claim(s) 1-7 under non-final rejection have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Sagawa et al (6,379,244) or Suzuki et al (6,227,968). Therefore, Applicant's arguments are moot regarding the Sitrick reference.

USPTO Contact Information

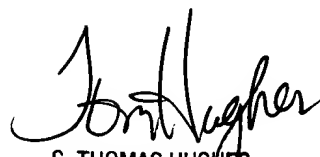
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carmen D. White whose telephone number is 703-308-5275. The examiner can normally be reached on Monday through Friday, 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3579.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1078.


cdw


S. THOMAS HUGHES
SUPERVISORY PATENT EXAMINER
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